

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BILLY RAY JOHNSON,

Petitioner,

v.

STUART SHERMAN,

Respondent.

Case No. 1:21-cv-01313-EPG-HC

ORDER GRANTING PETITIONER LEAVE
TO FILE AMENDED PETITION

ORDER DIRECTING CLERK OF COURT
TO MAIL PETITIONER BLANK § 2254
HABEAS FORMS

Petitioner Billy Ray Johnson is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

I.

DISCUSSION

The Rules Governing Section 2254 Cases (“Habeas Rules”) require preliminary review of a habeas petition and allows a district court to dismiss a petition before the respondent is ordered to file a response, if it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.” Rule 4, Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254; see also McFarland v. Scott, 512 U.S. 849, 856 (1994).

Habeas Rule 2(c)(5) states that the habeas petition must “be signed under penalty of perjury by the petitioner.” Here, Petitioner did not sign the petition under penalty of perjury.

(ECF No. 1). Accordingly, the Court will grant Petitioner the opportunity to file an amended petition, and Petitioner must sign the amended petition under penalty of perjury.

II.

ORDER

Accordingly, IT IS HEREBY ORDERED that:

1. Petitioner is GRANTED **THIRTY (30) days** from the date of service of this order in which to file an amended petition that is signed under penalty of perjury; and
2. The Clerk of Court is DIRECTED to send Petitioner blank § 2254 habeas forms.

Petitioner is forewarned that failure to follow this order may result in a recommendation for dismissal of the petition pursuant to Federal Rule of Civil Procedure 41(b) (a petitioner's failure to prosecute or to comply with a court order may result in a dismissal of the action).

IT IS SO ORDERED.

Dated: **September 7, 2021**

/s/ Eric P. Grogan
UNITED STATES MAGISTRATE JUDGE